

## Department of Homeland Security

## § 245a.20

### § 245a.19 Interviews.

(a) All aliens filing applications for adjustment of status with the Service under this section must be personally interviewed, except that the adjudicative interview may be waived for a child under the age of 14, or when it is impractical because of the health or advanced age of the applicant. Applicants will be interviewed by an immigration officer as determined by the Director of the Missouri Service Center. An applicant failing to appear for the scheduled interview may, for good cause, be afforded another interview. Where an applicant fails to appear for two scheduled interviews, his or her application shall be denied for lack of prosecution. Applications for LIFE Legalization adjustment may be denied without interview if the applicant is determined to be statutorily ineligible.

(b) At the time of the interview, wherever possible, original documents must be submitted except the following: official government records; employment or employment-related records maintained by employers, unions, or collective bargaining organizations; medical records; school records maintained by a school or school board; or other records maintained by a party other than the applicant. Copies of records maintained by parties other than the applicant which are submitted in evidence must be certified as true and correct by such parties and must bear their seal or signature or the signature and title of persons authorized to act in their behalf.

(c) If at the time of the interview the return of original documents is desired by the applicant, they must be accompanied by notarized copies or copies certified true and correct by the alien's representative. At the discretion of the district director, original documents, even if accompanied by certified copies, may be temporarily retained for forensic examination by the Service.

### § 245a.20 Decisions, appeals, motions, and certifications.

(a) *Decisions*—(1) *Approval of applications*. If the Service approves the application for adjustment of status under LIFE Legalization, the district director shall record the alien's lawful admission for permanent residence as of

the date of such approval and notify the alien accordingly. The district director shall also advise the alien regarding the delivery of his or her Form I-551, Permanent Resident Card, and of the process for obtaining temporary evidence of alien registration. If the alien has previously been issued a final order of exclusion, deportation, or removal, such order shall be deemed canceled as of the date of the district director's approval of the application for adjustment of status. If the alien had been in exclusion, deportation, or removal proceedings that were administratively closed, such proceedings shall be deemed terminated as of the date of approval of the application for adjustment of status by the district director.

(2) *Denials*. The alien shall be notified in writing of the decision of denial and of the reason(s) therefore. An applicant affected under this part by an adverse decision is entitled to file an appeal on Form I-290B Notice of Appeal to the Administrative Appeals Office (AAO), with the required fee specified in 8 CFR 103.7(b)(1). Renewal of employment authorization issued pursuant to 8 CFR 245a.13 will be granted until a final decision has been rendered on appeal or until the end of the appeal period if no appeal is filed. After exhaustion of an appeal, an alien who believes that the grounds for denial have been overcome may submit another application with fee, provided that the application is submitted on or before June 4, 2003.

(b) *Appeals process*. An adverse decision under this part may be appealed to the Associate Commissioner, Examinations, Administrative Appeals Office (AAO), who is the appellate authority designated in § 103.1(f)(3) of this chapter. Any appeal shall be submitted to the Service office that rendered the decision with the required fee.

(1) If an appeal is filed from within the United States, it must be received by the Service within 30 calendar days after service of the Notice of Denial (NOD) in accordance with the procedures of § 103.3(a) of this chapter. An appeal received after the 30 day period has tolled will not be accepted. The 30 day period for submitting an appeal begins 3 days after the NOD is mailed. If a review of the Record of Proceeding (ROP) is requested by the alien or his

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or her legal representative, and an appeal has been properly filed, an additional 30 days will be allowed for this review from the time the ROP is photocopied and mailed.

(2) If an applicant's last known address of record was outside the United States, and the NOD was mailed to that foreign address, the appeal must be received by the Service within 60 calendar days after service of the NOD in accordance with the procedures of §103.3(a) of this chapter. An appeal received after the 60 day period has tolled will not be accepted. The 60-day period for submitting an appeal begins 3 days after the NOD is mailed.

(c) *Motions.* The Service director who denied the application may reopen and reconsider any adverse decision *sua sponte*. When an appeal to the AAO has been filed, the director may issue a new decision that will grant the benefit that has been requested. Motions to reopen a proceeding or reconsider a decision shall not be considered under this Subpart B.

(d) *Certifications.* The Service director who adjudicates the application may, in accordance with §103.4 of this chapter, certify a decision to the AAO when the case involves an unusually complex or novel question of law or fact.

(e) *Effect of final adjudication of application on aliens previously in proceedings—*(1) *Upon the granting of an application.* If the application for LIFE Legalization is granted, proceedings shall be deemed terminated or a final order of exclusion, deportation, or removal shall be deemed canceled as of the date of the approval of the LIFE Legalization application for adjustment of status.

(2) *Upon the denial of an application—*

(i) *Where proceedings were administratively closed.* In the case of an alien whose previously initiated exclusion, deportation or removal proceeding had been administratively closed or continued indefinitely under §245a.12(b)(1), the director shall make a request for recalendar to the Immigration Court that had administratively closed the proceeding, or the Board, as appropriate, when there is a final decision denying the LIFE Legalization application. The Immigration Court or the

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Board will then recalendar the prior proceeding.

(ii) *Where final order was stayed.* If the application for LIFE Legalization is denied, the stay of a final order of exclusion, deportation, or removal afforded in §245a.13(f) shall be deemed lifted as of the date of such denial.

[66 FR 29673, June 1, 2001, as amended at 67 FR 38352, June 4, 2002; 72 FR 19107, Apr. 17, 2007]

### § 245a.21 Confidentiality.

(a) No person other than a sworn officer or employee of the Department of Justice or bureau or agency thereof, will be permitted to examine individual applications. For purposes of this part, any individual employed under contract by the Service to work in connection with the LIFE Legalization provisions shall be considered an employee of the Department of Justice or bureau or agency thereof.

(b) No information furnished pursuant to an application for permanent resident status under this Subpart B shall be used for any purpose except:

(1) To make a determination on the application;

(2) For the enforcement of the provisions encompassed in section 245A(c)(6) of the Act, except as provided in paragraphs (c) of this section; or

(3) For the purposes of rescinding, pursuant to section 246(a) of the Act (8 U.S.C. 1256(a)), any adjustment of status obtained by the alien.

(c) If a determination is made by the Service that the alien has, in connection with his or her application, engaged in fraud or willful misrepresentation or concealment of a material fact, knowingly provided a false statement or document in making his or her application, knowingly made a false statement or representation, or engaged in any other activity prohibited by section 245A(c)(6) of the Act, the Service shall refer the matter to the United States Attorney for prosecution of the alien and/or of any person who created or supplied a false statement or document for use in an application for adjustment of status under this Subpart B.

(d) Information contained in granted files may be used by the Service at a later date to make a decision: